

Opinion of the Court.

out February 16, 1894. It does not appear by the record, but is conceded by counsel, that a writ of error was taken to the Circuit Court of Appeals for the Seventh Circuit, and dismissed for want of jurisdiction. 60 Fed. Rep. 465. The jurisdiction of this court is invoked upon the ground that the only question in the case was as to the jurisdiction of the Circuit Court, but that question was not certified to this court by the Circuit Court for decision, and the writ of error must be dismissed upon the authority of *Maynard v. Hecht*, 151 U. S. 324; *Colvin v. Jacksonville*, ante, 368, and cases cited.

Writ of error dismissed.

TREAT MANUFACTURING COMPANY *v.* STANDARD STEEL AND IRON COMPANY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF ILLINOIS.

No. 353. Submitted March 25, 1895. — Decided April 8, 1895.

Where the trial judge is satisfied upon the evidence that the plaintiff is not entitled to recover, and that a verdict, if rendered for plaintiff, must be set aside, the court may instruct the jury to find for the defendant, and in such case no constitutional question arises; but if the court errs as matter of law in so doing, the remedy lies in a review in the appropriate court.

MOTION to dismiss. The case is stated in the opinion.

Mr. Charles W. Needham, Mr. William G. Beale, and Mr. Edward S. Isham for the motion.

Mr. John S. Cooper and Mr. George H. Shields opposing.

THE CHIEF JUSTICE: This was an action of trespass on the case. At the conclusion of the trial defendants moved the court to charge the jury to find the issues for defendants, which motion was granted, and the jury was directed, upon the whole case, to return a verdict for defendants, plaintiff duly excepting. Thereupon the jury returned a verdict accordingly; plaintiff moved for a new trial, which was denied,

Syllabus.

and judgment was given against plaintiff on the verdict. This judgment was rendered December 3, 1890. The writ of error from this court was brought November 24, 1891. The only ground relied on to sustain the jurisdiction of this court is that the case "involves the construction or application of the Constitution of the United States;" because plaintiff in error was deprived of the right of trial by jury. But it is well settled that where the trial judge is satisfied upon the evidence that the plaintiff is not entitled to recover, and that a verdict, if rendered for plaintiff, must be set aside, the court may instruct the jury to find for the defendant. *Grand Chute v. Winegar*, 15 Wall. 355; *Marion County v. Clark*, 94 U. S. 278; *Herbert v. Butler*, 97 U. S. 319.

If the court errs as matter of law in so doing, the remedy lies in a review in the appropriate court.

Writ of error dismissed.

ALLEN v. UNITED STATES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF ARKANSAS.

No. 788. Submitted March 4, 1895. — Decided April 8, 1895.

In a trial for murder by shooting with a pistol it appeared that the accused and the deceased had had difficulties; that the accused, knowing that he was to meet the deceased, had armed himself with a pistol; that when they met the deceased and his companions were armed with sticks; that an altercation ensued which resulted in the shooting; and the evidence was conflicting as to who had made the first attack. The court, under exception, instructed the jury as follows: "Now, gentlemen, these are the three conditions which I give you in the case. I have told you that if it is true that this defendant went up on one side of the fence and when there struck Philip Henson in the mouth and then shot him, that is murder. On the other hand, if it is true that Henson and the other boys attacked him with sticks, and while that attack was going on and in the heat of that affray, and the sticks were not of a dangerous or deadly character, and under such circumstances he shot and killed Philip Henson, that would be manslaughter; but if there was an absence of that condition, then there is no manslaughter in it, nor could there be any self-defence in it. There could be nothing else but this distinct grade of crime known as murder; because self-defence, as I have before defined